

retained, it should be assessed on a trunk-equivalency basis.⁶⁵ GTE supports USTA's position and concurs with its rationale.

IV. THE FCC'S HOLDING THAT ACCESS CHARGES DO NOT APPLY TO USERS OF UNBUNDLED NETWORK ELEMENTS VIOLATES THE COMMUNICATIONS ACT.

The *Access Reform Order* prohibits ILECs from assessing interstate access charges on entities using unbundled network elements for interstate access.⁶⁶ In so holding, the Commission asserted that the charges for unbundled network elements should fully recover the costs of providing the underlying facilities, and, therefore, interstate access charges would be duplicative.⁶⁷ GTE supports the requests of several LECs for reconsideration of this arbitrary and anti-competitive decision.⁶⁸

A. Failure To Permit Assessment Of Access Charges On Interstate Services Provided Through Unbundled Network Elements Violates Sections 254(d) And Section 202(a).

Exempting purchasers of unbundled network elements from access charge payments is unlawful and unreasonably discriminatory vis-à-vis other purchasers of functionally equivalent capabilities. The *Access Reform Order* specifically admits that not all of the universal service subsidies in access charges have been eliminated at this time. The Commission dismisses this problem as decisionally insignificant, concluding without any discussion that "excluding access charges from the sale of unbundled

⁶⁵ USTA Petition at 2.

⁶⁶ *Access Reform Order*, ¶ 337.

⁶⁷ *Id.*

⁶⁸ See, e.g., Rural Telephone Coalition ("RTC") Petition at 8-21; The Rural Telephone Companies at 3-15. GTE intends to press its position on appeal but is

(Continued)

elements will not dramatically affect the ability of price cap LECs to fulfill their universal service obligations."⁶⁹ The FCC's perpetuation of hidden universal service support in existing access charges, while at the same time exempting UNE purchasers from participating in those mechanisms, is a flagrant violation of Congress's mandate that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, *on an equitable and nondiscriminatory basis*,"⁷⁰ to supporting universal service.⁷¹

The prohibition on collecting access charges from purchasers of UNEs also violates the Eighth Circuit's recent *CompTel* decision.⁷² In upholding the FCC's plan to permit continued application of the CCL charge and 75 percent of the TIC during a

(Continued)

merely responding herein to the LEC reconsideration petitions.

⁶⁹ *Access Reform Order*, ¶ 338.

⁷⁰ 47 U.S.C. § 254(d) (emphasis added). GTE believes that the Commission has failed to adopt a comprehensive universal service plan based on "specific, predictable, and sufficient mechanisms" and should have removed all universal service subsidies from access charges. Nonetheless, because the Commission has expressly determined to continue using access charges as a universal service funding mechanism, the agency is bound by the requirement of Section 254(d) in effectuating that decision.

⁷¹ See *Universal Service Order*, ¶¶ 777-86, 842-57 (requiring *all* interstate telecommunications carriers to make contributions to the USF based on their end-user telecommunications revenues). For the same reason, the Commission's suggestion that application of access charges to UNE purchasers would violate the pricing standard for UNEs set out in Section 252(d)(1)(A) is baseless. See *Access Reform Order*, ¶ 336.

⁷² *Competitive Telecommunications Ass'n v. FCC*, No. 96-3604, slip op. (8th Cir., filed June 27, 1997).

transition period because the universal service subsidies contained in access charges had not yet been removed,⁷³ the Court stated that:

[T]he . . . Act requires the reform of universal service subsidies and not, significantly, abolishment of universal service, even temporarily. Clearly Congress did not intend that universal service should be adversely affected by the institution of cost-based [interconnection] rates. But the nine-month disparity between the deadline for implementation of cost-based service and the deadline for reform of universal service raises the threat of serious disruption in universal service for those nine months if cost-based service is required before universal service is funded by competitively neutral means. . . .

If the FCC, upon meeting the August 8, 1996, deadline for issuing the regulations required of it by subsection 251(d)(1), had not instituted an interim access charge of some sort in order to subsidize universal service for the nine months before universal service reforms are complete, we think it apparent that universal service soon would be nothing more than a memory.⁷⁴

Because the FCC has failed to remove all universal service subsidies from access charges, the *CompTel* court's reasoning compels continued application of access charges to users of unbundled network elements until the FCC complies with the requirement that universal service subsidies be made explicit.

Finally, requiring ILECs to assess different charges on CLECs purchasing UNEs as compared to resellers acquiring functionally equivalent access services is unlawfully discriminatory. Both classes of purchasers acquire identical capabilities to originate and terminate access traffic. Exempting UNE purchasers from payment of access charges is therefore unlawful and should be reversed.

⁷³ *Id.* at 12 (emphasis added).

⁷⁴ *Id.* at 12-13.

B. Failure To Permit Assessment Of Access Charges On Interstate Services Provided Through Unbundled Network Elements Is Anti-competitive.

The exemption of UNEs from access charges is also inconsistent with the “competitive neutrality” principle for universal service contributions articulated in the *Universal Service Order*.⁷⁵ There, the Commission defined competitive neutrality to mean “that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another” and found that this principle is both “necessary and appropriate for the protection of the public interest” and “consistent with [the] Act” as required by Section 254(b)(7).⁷⁶ Clearly, however, it is not competitively neutral to require incumbent LECs to obtain universal service funding from their access customers, while relieving competitive LECs of any similar obligation when they use exactly the same facilities of the ILEC to provide exactly the same access service. Ironically, this is precisely the type of differential regulatory treatment the Commission found to violate competitive neutrality when it considered recovery of number portability costs.⁷⁷ Competitive neutrality cannot mean one thing when the Commission believes a CLEC is disadvantaged and another thing when an ILEC is disadvantaged. The ILEC petitions should therefore be granted.

⁷⁵ See, e.g., RTC Petition at 18-19; The Rural Telephone Companies Petition at 10-11.

⁷⁶ *Universal Service Order*, ¶ 47.

⁷⁷ See *Telephone Number Portability*, 11 FCC Rcd 8352, 8415-24 (1996), *recon.*, FCC 97-74 (adopted March 6, 1997).

V. EXTENDING THE DEADLINE FOR IMPOSING CALL SET-UP CHARGES IS UNWARRANTED.

The Commission's new rules permit price cap LECs to impose separate per-call set-up charges on IXCs on or after July 1, 1998.⁷⁸ Certain petitioners ask the Commission to delay the date when such charges may be imposed.⁷⁹ Such delay is plainly unnecessary. The costs associated with call set-up are already being recovered in switched access charges, but in a manner that forces users with average or long holding times to subsidize users with short holding times. Many of the subsidized users are large financial institutions which can claim no inequity or undue harm by being forced to pay the costs they cause. Deferring the implementation of call set-up charges would undermine the FCC's goal of putting cost-causative rates into effect as soon as possible and would perpetuate an inefficient and regressive subsidy. Therefore, the Commission should deny these petitioners' requests.⁸⁰

⁷⁸ *Access Reform Order*, ¶¶ 138-47 (to be codified at 47 C.F.R. § 69.106).

⁷⁹ *See* Ad Hoc Telecommunications Users Committee et al. ("Ad Hoc Telecom Users et al.") Petition at 7-9; CompuServe Incorporated ("CompuServe") Petition at 4-5.


⁸⁰ GTE currently does not bill call set-up charges, but believes the Commission found correctly that ILECs should have the flexibility to charge separately for call set-up when they make a business decision to do so.

VI. CONCLUSION

To promote rational pricing and economically supportable competition, GTE urges the Commission to act consistent with the recommendations herein.

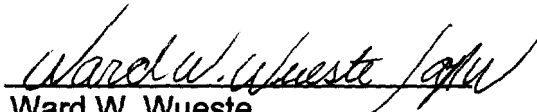
Respectfully submitted,

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